

## SCHEDULE 3 TO CUSTOMER CONTRACT

### CONTRACT INFORMATION STATEMENT

This document is to be read in conjunction with your Origin Customer Contract .

This Statement is approved by the Building Services Authority (BSA) pursuant to s.99(1) of the *Domestic Building Contracts Act 2000* (DBC Act) as satisfying the requirements of a Contract Information Statement for the purposes of the DBC Act. It does not form part of the Contract.

Please note that references to 'the contractor' that appear in this document are references to Origin.

#### PURPOSE OF THIS INFORMATION STATEMENT

*BSA recommends you read this Information Statement carefully BEFORE paying a deposit or signing the accompanying Minor Works Contract.*

The DBC Act requires a building contractor performing 'domestic building work' with a contract price exceeding \$3,300 to provide the homeowner with a written 'Contract Information Statement'.

The Statement must contain general information about the contractual process and related matters, including the rights and duties of homeowners and building contractors under contracts regulated by the DBC Act, and dispute prevention and resolution procedures.

#### PRE-CONSTRUCTION

##### ***BSA Licence***

Queensland legislation requires that all builders, building designers and most trade contractors must be licensed by BSA to carry out building work (there are a few exceptions e.g. electricians who have their own licensing system). For your own protection, you should **only deal with someone who has an appropriate BSA licence**. Dealing with an unlicensed contractor may leave you without the protection of the Queensland Home Warranty Scheme.

*Ask to see the contractor's licence card!*

You can confirm, free of charge, if the contractor's licence is current and appropriate for your particular project by phoning 1300 272 272 from anywhere in Queensland or by visiting BSA's website at [www.BSA.qld.gov.au](http://www.BSA.qld.gov.au)

*Note:* A written report containing details of the contractor's past performance is also available free of charge from any BSA Office. Information contained in this written report includes the number and value of BSA insured projects the contractor has completed since 1992 and some details of any action taken against them by BSA or the Queensland Civil and Administrative Tribunal.

##### ***What Work does the DBC Act Cover?***

Generally, all domestic building work with a contract price exceeding \$3,300 (including labour, materials, and GST) is regulated by the DBC Act.

The term 'domestic building work' is very broadly defined under the DBC Act and includes the following activities:

- the erection or construction of a detached dwelling (including a single detached dwelling or duplex), or associated work;
- the renovation, alteration, extension, improvement or repair of a home (including a single detached dwelling, duplex or home unit), or associated work (including kitchen or bathroom renovation);
- removal or resiting of a detached dwelling intended to be used as a residence, or associated work;
- other associated work including landscaping, paving and the erection or construction of any building or fixture associated with a detached dwelling or home such as a garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa;
- the provision of services or facilities (e.g. lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage) relating to the erection or construction of a detached dwelling or the renovation, alteration, extension, improvement or repair of a home; and
- site work relating to any of the domestic building work referred to above.

### **Contract Checklist**

If your project comprises 'domestic building work' regulated by the DBC Act (i.e. almost any domestic building work with a contract price exceeding \$3,300), your agreement with the contractor must be recorded in a written contract as soon as practical (but within five (5) business days) after it is entered into and before work commences.

You should carefully read and ensure that you fully understand the contract before signing it. It is important to obtain legal advice regarding any contract provisions which you don't understand or are concerned about. The DBC Act sets out a number of requirements concerning the form and content of the contract.

*Note:* Our Customer Contract meets these requirements.

Before signing any contract you should check it carefully to ensure that:

- it is in English and is readily legible;
- it includes a detailed description of the subject works;
- it displays a conspicuous notice advising the building owner of the rights the owner may have to withdraw from the contract under the cooling-off provisions of the DBC Act;
- all agreed terms have been incorporated into the written contract;

- all relevant statutory warranties are included in the contract (these statutory warranties are summarised later in this Information Statement);
- it includes the names and addresses of all parties to the contract and the precise location of the subject work, including lot-on-plan, or similar, description;
- the contract states whether or not the building owner is a 'resident owner' (i.e. intends to live in the building within six (6) months of completion of the contracted work);
- the building contractor's licence number is stated;
- the date the contract is made is stated;
- the date the subject work is to start, or how the date is to be decided, is stated;
- if the starting date is not yet known, the contract must state that the building contractor will ensure that the work starts as soon as is reasonably possible;
- the contract states the date the contracted work is to be finished or, if the start date is not yet known, the number of days required to finish the work once it is started;
- allowances made by the contractor for any likely delays (e.g. for non-working days, inclement weather, etc.) are detailed;
- the contract price and payment provisions (including the deposit and progress payments, if any) are clearly stated and in agreement with relevant DBC Act provisions;
- if the contract price is subject to change, there must be a warning located near the contract price referring to any clause in the contract which may have the effect of changing the contract price;
- any Provisional Sums or Prime Cost Items are listed on a separate schedule;
- key technical words or phrases used in the contract are defined;
- it includes appropriate plans and specifications if these are required for the subject work; and
- if the contracted work includes or may affect footings or a concrete slab, the contractor must obtain appropriate 'foundations data' (including soil tests, contour surveys and other geotechnical information).

Where foundations data is required for the work, the contractor must provide the home owner with a copy of this information on payment of costs, unless the owner already has a copy or the contractor reasonably believes the owner has a copy.

### **Cost Plus Contracts**

Under the DBC Act, a cost plus contract is one under which the amount the contractor is to receive cannot be calculated when the contract is entered into (this definition would include arrangements where the contractor is paid an hourly rate or a percentage of costs). The use of cost plus contracts for domestic building work is prohibited under the DBC Act unless certain conditions are met, including that "...the cost of a substantial part of the subject work cannot reasonably be calculated without some of the work being carried out".

The contract must also contain "...a fair and reasonable estimate...of the total amount the building contractor is likely to receive under the contract".

While cost plus contracts may be convenient and valid in some rare cases, there are potentially significant risks for owners associated with their use, especially the uncertainty about the total cost of the project.

*Warning:* Because of the risks and frequent disputes associated with their use, BSA strongly recommends owners obtain independent legal advice before using these contracts.

### **Deposits and Provisional Allowances**

The deposit under the contract must not exceed 10% of the total contract price for contracts less than \$20,000. For contracts equal to or in excess of \$20,000, the deposit must not exceed 5%. Under the DBC Act these deposit maximums cannot be exceeded, even if both parties agree. If the contract includes prime cost items or provisional sums, the contractor is required to give you copies of any invoices or receipts before seeking payment. All prime cost items or provisional sums within a contract must be recorded on a separate schedule which sets out the estimated cost of the item, the amount of the contractor's margin either by percentage or actual amount, and the total amount for the item. This total amount is an estimate only. The final cost may be more or less than the allowance.

*For contracts less than \$20,000: deposit must not exceed 10%*

*For contracts \$20,000 or more: deposit must not exceed 5%*

### **The 'Cooling-off' Period**

The DBC Act provides homeowners with the protection of a cooling-off period. **Under s.72** of the DBC Act **you are entitled to withdraw from the contract within five (5) business days** of receiving from the contractor a copy of both:

- the signed contract; and
- a BSA-approved contract information statement appropriate for the contract.

If both of the documents are not received at the same time then the cooling-off period commences when you receive the second document.

### **If you don't receive a copy of both the signed contract and the contract information statement**

Once the contract is made, the contractor has five (5) business days in which to provide you with copies of both the signed contract and the information statement. If after the expiry of the five (5)

business days you have still not received your copies of both these documents, then you may withdraw at any time after that.

*Note:* If the contractor later provides you with copies of both these items, you may still withdraw from the contract but you have only five (5) business days from the date you received both documents in which to exercise this right.

*If the contract doesn't contain a cooling-off notice*

If the contract does not include a notice advising you of your right to withdraw during the cooling-off period, then **under s.74** of the DBC Act **you may withdraw from the contract anytime within seven (7) calendar days** after you become aware that the contract should have contained a cooling-off notice

*Note:* Our Customer Contract does include a conspicuous notice (on page 1 of the Details Section) advising you of your rights under the cooling-off provisions.

*When you may not withdraw under the cooling-off provisions*

You may **not** withdraw during the cooling-off period if:

- you and your contractor had a previous contract on similar terms, for similar work, and relating to the same property; or
- you have received independent legal advice about the contract before entering into the contract; or
- you tell the contractor that you have received independent legal advice about the contract before entering the contract.

*How to withdraw*

You may withdraw from the contract under s.72 or s.74 of the DBC Act **by providing a notice in writing** to the contractor advising that you are withdrawing and **stating the section of the DBC Act under which the withdrawal is made**. You do not need to give a reason for your decision to withdraw. The notice may be:

- given to the contractor; or
- left at their address stated on the contract; or
- served on the contractor in accordance with any provision in the contract providing for service of notices.

*Cost of withdrawing*

There is a cost to you in exercising your cooling-off rights. Under the DBC Act, in most circumstances the building contractor is entitled to be paid (or retain if you have already paid a deposit) an amount equal to \$100 plus any out-of-pocket expenses reasonably incurred up to the date of withdrawal.

Where the you have already paid a deposit greater than the amount the contractor is entitled to recover on withdrawal, the contractor must refund to the owner the balance of the prepaid amount.

If your contract is for urgent repair work you may waive your right to withdraw from the contract by giving a waiver notice to the building contractor.

### ***Approval of Plans***

Most substantial domestic building work (especially if it has structural implications) will require building approval. If you are unsure whether building approval is required, check with your local government Building Section or a Private Certifier.

Approvals for building work must be obtained from a Building Certifier (formerly known as a 'building surveyor/inspector') who may be either a local government Building Certifier or a Private Certifier. All Building Certifiers must be licensed by BSA (you can check their licence by visiting BSA's website at [www.BSA.qld.gov.au](http://www.BSA.qld.gov.au)).

If plans are required for your building project, check them carefully yourself before they are submitted for approval to ensure they accurately reflect what you have contracted to get done. Advise the contractor immediately of any errors or omissions in the plans. Obtain a copy of the approved final plans and keep them in a safe place. For further information on building approvals and inspections, read BSA's Fact Sheet on this subject available from BSA's website.

### ***Insurance***

#### ***Insurance of the work and site during construction***

Contact your home property insurer before work commences to ensure that your existing insurance policy will be operative while the renovations are occurring, and to organise an endorsement to your current policy to allow for any increase in the property value following the work. You must also check with your contractor to ensure they have taken out the appropriate construction insurance (including for Contract Works and Public Liability).

#### ***Queensland Home Warranty Scheme***

For almost all residential construction work valued at more than \$3,300, the Queensland Home Warranty Scheme provides protection to homeowners against non-completion, defective work or subsidence for up to six years six months, provided a licensed contractor performs the work. Further details of the insurance cover are provided in the policy booklet.

The contractor is required to pay a premium to BSA before plans can be approved by a Building Certifier. You should receive a Certificate of Insurance and a policy booklet from BSA within approximately two weeks of payment by the contractor.

If the Notified Contract Value shown on the Certificate of Insurance differs from that on your contract you should notify BSA to amend your insurance cover.

## **DURING CONSTRUCTION**

### ***Progress Payments***

If the contract price is to be paid by instalments (i.e. progress payments), the payments should not be in advance of work progress (i.e. when 50% of the work has been completed, you should not be required to pay more than 50% of the total contract price). Having agreed to a written progress payment schedule, stick to it and do not pay before the progress payment is required under the

contract. Pre-payment or over payment of contract instalments may reduce the protection available to you under the Queensland Home Warranty Scheme.

### ***Variations***

A change to the original contract – which may involve either an increase or reduction in the extent and value of the contracted work – is generally known as a ‘variation’. Failure by the home owner or the contractor to fully document variations is a common cause of costly building disputes.

If you wish to request a variation, you should put your request in writing to the contractor. **The contractor must put any agreed variations in writing** as soon as practicable and, if the variation means additional work, it is to be done **before the variation work is carried out**.

The contractor must give you a copy of the variation document as soon as practicable but within five (5) business days of when the variation is agreed to. An exception is where the variation is for domestic building work that is required to be carried out urgently and it is not reasonably practicable, in the particular circumstances, to produce a variation document before carrying out the work.

### ***Requirements for a Variation Document***

The DBC Act sets out the requirements for a variation document. The variation document must:

- be in English and readily legible;
- describe the variation;
- state the reason for the variation if sought by the contractor;
- give a reasonable estimate of any delay to the work which may result from implementing the variation;
- state any change in the contract price due to the variation or how the change is to be worked out;
- advise when the extra cost or refund for the variation will be paid or credited (**NOTE:** The contractor cannot require payment of any cost increase before the work involved in the variation is started); and
- be signed by the contractor and, if possible, by the home owner.

If the contractor asks you to agree to a variation and it involves extra work, you are only liable to pay for that extra work if it is work the contractor could not reasonably have foreseen at the time of entering the contract. In any event, do not make any payment for a variation until the variation is in writing and has been signed by the contractor, and work has commenced on the variation.

*Only pay for a variation once it is in writing AND work on the variation has commenced.*

### ***Building Inspections***

If mandatory building inspections are required for your building project (if in doubt check with your local government Building Section or a Private Certifier), they must be carried out by either a local government Building Certifier or a Private Certifier or a competent person authorised by them. If the contractor has engaged the certifier, the contractor must provide you with a copy of each certificate of inspection as soon as practicable after they receive it from the certifier.

As soon as is practicable after the work is completed the contractor must also provide you with copies of other contract-related documents such as reports, notices or orders issued by suppliers of services, including, for example, electricity, gas, telephone, water, or sewerage.

The primary function of these mandatory on-site building inspections is to ensure that the construction work complies with the approved plans and recognised building standards, including the Building Code of Australia (BCA).

*Note:* It is not the role of the certifier to ensure compliance with the terms of the contract or specifications, or to assess or supervise the quality of the work.

### ***Access to the Site***

The contractor is to be given control of and access to the building site to carry out the contracted work. You (or a person authorised by your) **are entitled to reasonable access to the site** to view the work under the contractor's supervision **but you must not interfere with the carrying out of the contracted work**. If you or your representative interfere with the contracted work in exercising your right of access you may become liable for any additional costs or delays which result from your interference.

If you are going to live at the site of the contracted work within six (6) months of completion, then your contractor has no right to lodge a caveat over your land.

### ***Dispute Prevention***

There are many causes of disputes between consumers and contractors. Apart from faulty workmanship, the most common causes relate to poor communication and inadequate documentation. Both parties must accept responsibility for this.

A key step in preventing disputes is to ensure that you carefully read and fully understand the contract before signing it. Do not hesitate to seek legal

advice if you are uncertain or have concerns about any of the contract provisions. **Make sure that the contract documents**, including any plans and specifications, **fully detail all aspects of your agreement with the contractor** regarding the building work to be performed. Maintain good communication with the contractor and monitor the progress of the work while being careful not to interfere. Record brief details and dates of all meetings and significant conversations with the contractor and key events which occur in relation to the work (a cheap diary is recommended for this purpose). Always date and retain a copy of all correspondence with your contractor (especially correspondence regarding payments, variations and problems).

*Read and understand the contract before you sign, and seek legal advice if you are unsure.*

*Note:* To protect your rights if a dispute does arise it is very important that you keep copies of contract documents (including schedules, terms and conditions, any plans and specifications, forms, etc).

### **Quality Control**

It is the responsibility of the contractor and the home owner, working together, to ensure that the standard of quality and finish is acceptable. If you have specific requirements with regard to quality and finish these details should, as far as possible, be discussed beforehand with the contractor and written into the contract. The next step is to carry out regular inspections of the work with the contractor or contractor's supervisor. Try to give the contractor reasonable notice of your inspections to ensure they will definitely be on site to speak with you when you arrive.

If you feel you do not have the expertise or knowledge required, or are likely to be absent for much of the building work, you may consider employing the services of a suitably qualified and experienced Building Consultant to assist you in monitoring work progress and quality. Before engaging a particular consultant you may need to shop around. Be sure to compare not just the price they charge but also their qualifications, industry experience, track record (ask for and contact several past clients) and the range of services they offer.

### **Liquidated Damages**

Most industry contracts include a provision for "liquidated damages".

This term refers to an amount per day written into the contract by the owner before signing that is to compensate the owner for any costs/losses they are likely to suffer if the work is not completed by the contractor within the time allowed for in the contract. Normally liquidated damages would only be relevant to fairly major renovations and extensions, especially those affecting occupancy of the house.

Although some contracts include set amounts for liquidated damages, or default amounts (e.g. \$15 per day) which apply if the owner does not insert any figure into the contract, the appropriate amount will depend on the nature of the work and the owner's individual circumstances. The owner must be able to substantiate the figure and it must not be punitive (i.e. it must represent the owner's genuine estimate, at the date of signing the contract, of actual costs/losses they believe they are likely to suffer, without adding any extra cost to 'punish' the contractor). **If liquidated damages are applicable to the project, it is important that you calculate and insert an appropriate amount.** The calculation would typically include a daily allowance for any additional rent (if the project necessitates moving out), storage of furniture/personal effects, finance costs, etc. directly attributable to the delay in the completion date.

### **UPON COMPLETION**

Upon completion you should conduct a comprehensive inspection of the work with the contractor. Be sure to advise the contractor in writing of any defective or missing items, or any damaged or unfinished work, and request its rectification. You should then hand over the final payment under the contract (do not withhold this payment without first obtaining legal advice or you could be sued for breach of contract).

## **DISPUTE RESOLUTION**

### ***Advise the Contractor***

If during the work or upon completion of the work you become concerned about a problem relating to the contracted work, you should first convey your concern to the contractor in writing asking them to address the matter within a reasonable time frame (say seven to 14 days) and provide you with a written response. Ensure you date, sign and retain a copy of your letter/s and the responses from the contractor.

### ***Contact BSA***

If the dispute is not resolved to your satisfaction within the time frame you nominate, you should refer the matter promptly to BSA which is the regulatory body responsible for overseeing residential construction work in Queensland.

*Note:* BSA does not generally assist with minor defects that are more than six months old, or with purely contractual disputes. After you have completed and lodged a BSA Complaint Form, a BSA technical representative may meet you and your contractor on site to inspect the work. Prior to the site inspection, you and your contractor will have further opportunity to resolve the dispute. At the site inspection BSA will make a determination as to who is responsible for the defects and, where appropriate, direct your contractor to rectify any defects or complete the works. If your contractor is directed to rectify the works you must allow them reasonable access to the site.

To contact BSA, call 1300 272 272 statewide or visit BSA's website at [www.BSA.qld.gov.au](http://www.BSA.qld.gov.au). Address and fax details for BSA offices throughout Queensland are listed on the back page of this document.

### ***Queensland Civil and Administrative Tribunal (QCAT)***

You are also entitled to take any disputes in relation to your domestic building project to the QCAT. The QCAT provides cost effective resolution for domestic building disputes, particularly those of a contractual nature. Further information about the QCAT and its procedures can be obtained by visiting [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au), or calling 1300 753 228.

### ***Other Options***

Depending on the terms of the contract, other options may be available to you, including:

#### **Liquidated Damages**

The contract may give you other rights such as liquidated damages. You should read your contract carefully and if unsure of your rights or obligations, seek legal advice from a practising lawyer.

#### **Contract Termination**

Under certain circumstances you may have the right to terminate the contract. This is a serious decision to make and would usually be a last resort. It will involve some costs to you.

**Formal legal advice is essential if you are considering ending the contract for any reason.** If you terminate the contract without being entitled to do so, you may create serious difficulties for yourself (e.g. you could be sued by the contractor for breach of contract and you may reduce your protection under the Queensland Home Warranty Scheme).

### Court Action

As an alternative to the CCT, you may be able to take action in a court. You should obtain formal legal advice to explore this option.

## **AFTER MOVING IN**

### ***Maintenance***

Obviously it is important, for both aesthetic and financial reasons, to maintain your home after the renovation or extension work has been completed.

You should discuss specific cleaning and maintenance requirements, if any, with the contractor when the work is completed. Information from the suppliers of materials or products used in the building work may also be valuable.

### ***Termite Protection***

Certain types of building work (e.g. home extensions) may involve the need for termite protection. Discuss the termite management options with your contractor and be sure to observe the maintenance requirements for whatever method is used (it is generally recommended that you have your home inspected at least annually by a BSA licensed termite management contractor).

For more information on this subject, read the relevant Fact Sheets on the BSA website under 'Consumers'.

### ***Manufacturers' Warranties***

Manufacturers' warranties for any new household appliances associated with your contracted work (e.g. warranties for a new range hood or wall oven if these are supplied and installed by the contractor as part of a kitchen renovation) should be obtained from your contractor.

### ***Statutory Warranties***

(See next page.)

### Statutory Warranties

Under the DBC Act, the following warranties apply to domestic building work costing more than \$3,300:

<u>Warranty</u>	<u>Remarks</u>
<p><b>MATERIALS:</b></p> <p>All materials to be supplied for use in the subject work will be:</p> <p><input type="checkbox"/> good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and</p> <p><input type="checkbox"/> new, unless otherwise stated in the contract.</p>	<p>This warranty only applies if the contractor is responsible for supplying the materials. The warranty does not apply where:</p> <p>(a) You have engaged an architect to administer the contract and the building contractor is subject to the direction of the architect regarding the supply of the materials; or</p> <p>(b) The contract states that you are responsible for nominating the materials and, without any recommendation, suggestion or other approach being made to you by the contractor, you specifically nominate certain materials and either:</p> <p>i. there are no reasonable grounds for not using those materials; or</p> <p>ii. there are reasonable grounds for not using those materials but you insist on using them despite written advice to the contrary from the contractor.</p> <p>In determining the suitability of materials regard must be had to the generally accepted practices or standards applied in the building industry for the materials and the specifications, instructions or recommendations of manufacturers or suppliers of the materials.</p>
<p><b>COMPLIANCE WITH THE LAW:</b></p> <p>The contractor warrants that the work will be carried out in accordance with all relevant laws and legal requirements.</p>	
<p><b>SKILL AND REASONABLE CARE:</b></p> <p>The contractor warrants that work will be carried out in an appropriate and skilful way and with reasonable care and skill.</p>	

<p><b>PLANS AND SPECIFICATIONS:</b></p> <p>The contractor warrants the work will be carried out in accordance with the plans and specifications.</p>	<p>This warranty only applies if plans and specifications are required and form part of the contract.</p>
<p><b>SUITABILITY FOR OCCUPATION:</b></p> <p>The contractor warrants that the home will be suitable for occupation when the work is finished.</p>	<p>This warranty applies to work intended to renovate, alter, extend, improve or repair a home to a state suitable for occupation.</p>
<p><b>REASONABLE DILIGENCE:</b></p> <p>The contractor warrants the subject work will be carried out with reasonable diligence.</p>	<p>This warranty <b>only</b> applies if the contract is a <b>cost plus contract</b> and does not have a stated completion date or period.</p>
<p><b>CALCULATION OF PROVISIONAL SUMS:</b></p> <p>The contractor warrants that the provisional sum has been calculated with reasonable care and skill, having regard to all the information reasonably available when the contract was entered into (including information about the nature and location of the building site).</p>	<p>This warranty only applies to contracts which include provisional sums.</p>